

APPEAL NO. 010123

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), and is based on the sufficiency of the evidence. Following a contested case hearing held on December 12, 2000, the hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury; that there was no disability because there was no compensable injury; and that the respondent (carrier) would, in any event, be relieved of liability under Section 409.002 because the claimant did not provide timely notice of injury to her employer under Section 409.001. The claimant and the carrier both provided written briefs setting forth their positions on this appeal.

DECISION

The hearing officer's finding as to date of injury is modified to accord with the stipulated date of injury, _____. In all other respects, the hearing officer's decision is affirmed.

The claimant claims that she injured her right wrist in a fall at work during _____. The parties stipulated to the actual date of injury as being _____. The fact that the claimant fell and claimed to have a pain in her wrist is corroborated by another employee who heard the fall and soon after heard the claimant complain that she had hurt her hand. The claimant testified that she told Ms. G, the personnel manager, about the injury the next day, as the injury occurred in the evening hours and there was no one in the personnel section to report to on the day of the injury. The claimant says Ms. G was told about the hand injury; that it occurred at work the night before; and that the claimant was going to be out for a week. Ms. G, however, testified that the claimant came in sometime during August 1997 only complaining of not feeling well and asking to leave for the day. Ms. G said there was no report of a fall or a work-related injury. Work records show that the claimant was not at work from August 20 to 27 and again from September 3 to 7, 1997. Regarding the medical evidence, the hearing officer found that the evidence supporting the claimant's injury as the cause of her current medical condition (aseptic necrosis) was speculative, and not established to a reasonable degree of medical certainty.

The claimant urges that the great weight and preponderance of the evidence shows that proper notice was given of the injury and that the injury resulted in aseptic necrosis. The hearing officer is the sole judge of the weight and credibility of the evidence, Section 410.165(a), resolves the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and

we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision, as modified to correct the date of injury, and the order of the hearing officer are affirmed.

Michael B. McShane
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge